

SERVICE DATE – JULY 21, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-70 (Sub-No. 5X)

FLORIDA EAST COAST RAILWAY, L.L.C.—ABANDONMENT EXEMPTION—
IN BREVARD COUNTY, FL

Decided: July 20, 2005

Florida East Coast Railway, L.L.C. (FEC) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 9.8-mile line of railroad known as the Titusville Branch, extending from milepost TB 0.0 in Titusville to milepost TB 9.8 in Aurantia, Brevard County, FL. Notice of the exemption was served and published in the Federal Register on June 16, 2005 (70 FR 35155). The notice provided that the exemption would become effective on July 16, 2005, unless stayed by the Board or unless a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c) was filed by June 27, 2005.

On June 27, 2005, Hust Brothers, Inc. (Hust), timely filed a formal expression of intent to file an OFA to purchase the entire line. As a result of the filing, the effective date of the exemption was automatically stayed until July 26, 2005. Hust simultaneously asked that FEC provide it with the financial data and information prescribed in 49 CFR 1152.27(a) (copies of the most recent report of the physical condition of the line, the carrier's estimate of the net liquidation value of the line, with supporting data, and the minimum purchase price that the railroad seeks).

In a letter dated July 11, 2005, Hust states that, to date, FEC has not provided the requested information and requests that the 30-day period for submitting an OFA be tolled until August 15, 2005. Hust also requests that the railroad be required to produce the information by August 1, 2005, so that Hust will have a reasonable opportunity to analyze and appraise it in advance of preparing its OFA.

By letter dated July 13, 2005, Hust advises that it has been assured by FEC that it would provide the requested data no later than July 14, 2005. Accordingly, Hust requests that the period for submitting its OFA be tolled until August 10, 2005, rather than August 15, 2005.

By pleading filed on July 14, 2005, FEC has submitted its reply pursuant to the Board's regulations at 49 CFR 1152.27(a) and in response to Hust's request. In its reply, FEC states that it has conferred with Hust regarding the information sought, and the extension request, and that they have agreed to an extension of the due date for filing an OFA by Hust until August 10,

2005. Because Hust needs the additional time to study the information before preparing its OFA, the request will be granted. As a result, Hust's OFA will be due on August 10, 2005, and the effective date of the exemption will be postponed until August 20, 2005.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on June 21, 2005. In the EA, SEA states that the National Geodetic Survey (NGS) has identified 9 geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that a condition be imposed requiring FEC to notify NGS at least 90 days prior to the onset of salvage activities to provide time for NGS to plan for the possible relocation of the station markers.

No comments to the EA were submitted by the July 6, 2005 due date. Accordingly, the environmental condition recommended by SEA in the EA will be imposed.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption of the abandonment of the line described above is subject to the condition that FEC shall notify NGS at least 90 days prior to the onset of salvage activities to provide time for NGS to plan for the possible relocation of the station markers.
3. The time period for Hust to file an OFA is tolled until August 10, 2005.
4. The effective date of the exemption is postponed until August 20, 2005.
5. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary